104

Supreme Court, U.S.
FILED
08-143 AUG 1 - 2008
OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

CYRUS Y. KIM
Petitioner,

VS.

CITY OF FEDEAL WAY,
TARGA REAL ESTATE SERVICE, INC.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO WASHINGTON STATE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Cyrus Y. Kim Pro Se
1807 S. 308th ST. CT. #11
Federal Way, WA 98003
(253) 946-1834

QUESTIONS PRESENTED FOR REVIEW

1. Is the judgment of a judge in a State the conduct of negligence and malpractice?

2. Can judges in a State limit the filing period for the claim of money damage for the deprived personal properties by state action?

3. Can judges in a State refuse the decisions by U.S. Supreme Court?

4. Can judges in a State abridge the right protected by Fourteenth Amendment by interpreting State statutes in a distorted way?

5. Can judges in a State abridge the right protected by Fourteenth Amendment by arbitrarily making wrongful acts the conduct of negligence and malpractice?

6. Can judges in a State unequally classify "judgment" a State statute?

7. Can judges in a State violate Article VI, Section 2 and Fourteenth Amendment?

A LIST OF ALL PARTIES

Petitioner:
Cyrus Y. Kim Pro Se

1807 S. 308th St. CT. #11
Federal Way, WA 98003

Respondent (1):
City of Federal Way

Counsel for City of Federal Way:
Aaron Gregory Walls
City of Federal Way
33325 8th Ave. S.
PO Box 9718
Federal Way, WA 98063-9718

Brian A. Christensen
Jerry Moberg & Associates
451 Diamond Drive
Ephrata, WA 98823-2619

Respondent (2):
Targa Real Estate Service, Inc.

Counsel for Targa Real Estate Service, Inc.:
Aaron Shawn Hicks
800 Fifth Ave. Suite 3825
Seattle, WA 98104-3718

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U.S. Constitution
Article VI, Section 2.....6, 7, 9, 11, 13, 14
Fourteenth Amendment.....6, 7, 9, 11, 13, 14

US Supreme Court Cases
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Windsor v. McVeigh (93 U.S. 274, 277, 280 (1876)).....14

State Court Case
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State statutes
RCW 4.16.020(2).....4, 7, 12, 13, 14
Actions to be commenced within ten years: (2) For **an action upon a judgment** or decree of any court of the United States, or of any state or territory within the United States, or any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

RCW 4.16.040.....4, 10, 14
Actions limited to six years:(1) an **action upon a contract** in writing, or liability express or implied arising out of a written agreement.

RCW 4.16.080.....4 - 8, 10, 11, 14
Actions limited to three years: (2) an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

State court rule
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(6) Failure to state a claim upon which relief can be granted.

I. OPINIONS BELOW

Order denied the petition for review Washington State Supreme Court justices rendered on July 9, 2008 is reprinted at App. p. A-1.

Order denying motion to modify State Appeals Court judges rendered on November 30, 2007 is reprinted at App. p. A-2.

The ruling granting motion on the merits to affirm State Appeals Court commissioner rendered on September 4, 2007 is reprinted at App. p. A-3.

Order granted motion to dismiss State Superior Court judge rendered on February 23, 2007 is reprinted at App. p. A-6.

Order granted motion to dismiss State Superior Court judge rendered on January 19, 2007 is reprinted at App. p. A-7.

II. JURISDICTION

Five justices of Washington State Supreme Court denied the petition for review on July 9, 2008. This petition is timely because it is filed within less than 30 days from July 9, 2008.

III. FACTS

A. Impounding of a tenant's car without a notice under other's lease agreement

The department of licensing of Washington State has suspended Kim's driver's license for more than nine years for the unpaid amount of $5,487 an insurance company paid to its client. Thus, the vehicle tabs of two cars were expired. A manager of

Zaran Sayre & Associates, Inc. allowed to park the cars with expired car taps, but recommended to move the cars to other parking spaces once a month.

Targa Real Estate Service, Inc. ("Targa") took over the management from Zaran Sayre & Associates, Inc. ("Zaran") around the end of October 2000. The lease agreement between Targa and Kim's mother and Kim started on November 3, 2000.

Without a notice, Targa property manager and resident manager impounded Kim's one car parked in apartment parking lot on October 28, 2000 under the lease agreement with Zaran Sayre. Targa managers acted without authorization and violated the lease agreement with Zaran Sayre.

B. A municipal court judge' judgment as an abandoned car

At the impounding hearing, the managers asserted that they gave a warning notice, but the managers didn't show any copy of a warning notice or any evidence of it to the municipal court judge. The judge asked the managers whether the towing sign was posted in the apartment complex, but did not ask whether Kim was a tenant. When Kim repeated that the impounding was without a notice, the judge warned Kim of **"contempt of court"** and then, the judge ordered to pay storage fee of $570.00 as an abandoned car on November 16, 2000 (App. p. A-8).

C. Apartment managers' order to remove another car of the same tenant out of apartment complex parking lot.

Right after the judgment as an abandoned car, Targa managers ordered to remove another Kim's car out of apartment parking lot, otherwise, they would remove that car with Kim's cost.

D. ABT towing company dumped all belongings in the car trunk.

ABT towing of Federal Way, the only remained defendant, dumped all belongings including very precious picture negative album (book) keeping more than three thousands negatives with copy right, which were collected during Kim's ten-year photo studio business and reusable for business.

E. Suits claiming the lost properties

1. Suits filed in United State District Court

On January 30, 2004, Kim filed a suit claiming $501,850.00 against State of Washington, who would be the third party plaintiff against the respondents of this case, challenging the constitutionality of the action of the department of licensing, three times suspension of Kim's driver's license to urge to pay the unpaid money of $5,487.00 an insurance company paid to its client, because the suspensions made vehicle taps expire. The suit was dismissed under Eleventh Amendment, due to the claiming money damage. The suits continued under different defendant's name until March 9, 2007.

2. Suit filed in the State Superior Court

On November 2, 2006, before the limitation of six

years for action upon a contract by RCW 4.16.040(1), Kim filed this complaint under the title of the cause of action of negligence, malpractice, and intentional torts claiming money damage caused by and resulted from the managers' wrongful acts and authorized by the municipal court judge's judgment against Targa, City of Federal Way, and ABT towing co.

F. State Superior Court judge dismissed this case on the basis of the conduct of negligence and malpractice.

All defendants didn't serve their answers, and two defendants among three defendants, City of Federal Way and Targa, filed motion to dismiss pursuant to CR 12 (b)(6), *"Failure to state a claim upon which relief can be granted."* However, on January 19, 2007, state superior court judge granted the motion to dismiss for City of Federal Way on the basis of judge's conduct of negligence and malpractice by applying RCW 4.16.080(2).

On February 23, 2007, the judge granted the motion to dismiss for Targa on the basis of the managers' conduct of negligence and malpractice.

G. State Appeals court commissioner affirmed.

The commissioner affirmed it on the merits as follows:

1. The ten-year limitation period of RCW 4.16.020(2) for an "action upon a judgment or decree" applies only to efforts to execute upon the judgment and not to efforts to attack the validity of a judgment. This statute does not allow a person ten years to

bring an action to challenge the validity of a judgment or assert some wrongdoing in obtaining a judgment.

2. RCW 4.16.080(2) bars any claims for negligence, malpractice, or intentional tort.

> RCW 4.16.080(2): *An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another...*

3. Kim did not appeal against the municipal court judge's judgment as abandoned car.

H. State Appeals Court three judges reaffirmed.

Appeals court three judges denied the motion to modify the commissioner's ruling without any explanation.

I. State Supreme Court denied the petition for review

State Supreme Court five justices denied the petition for review without any explanation.

IV. ARGUMENT

A. Origin of mistakes and key controversy that brought this far.

1. Mistakes in the same way

Before reading the book of torts, petitioner Kim filed this complaint with the title of cause of action as negligence, malpractice, and intentional tort in the abyss of ignorance about torts. Right after reading the book, Kim realized it was a big mistake; it should have been the claiming of money damages for the deprived personal properties by state action of judgment and for the mental distress inflicted by Targa managers' wrongful acts and municipal court judge's unconstitutional state action, but it was too late to amend it, because two respondents already filed the motion to dismiss before serving their answers. Thus, Kim did not have a chance to amend the mistakenly expressed words of negligence and malpractice.

Seriously in the same way, all judges in Washington State made serious same mistakes surrounding the words of negligence and malpractice, violating Article VI [2] and Fourteenth Amendment.

2. Key controversy

Five judges and five justices in Washington State

a. Municipal court judges' judgment and Targa managers' impounding act under other company's lease agreement and removing order of another car out of apartment parking lot are the conduct of negligence and malpractice, because the cause of action is expressed as the conduct of negligence and malpractice. So, three-year limitation must be applied.

b. RCW 4.16.080(2) implies all personal properties.

c. The "judgment" in RCW 4.16.020(2), "an action upon a judgment" is for the effort to execute the judgment, but is not for effort to attack the validity of the judgment. So, ten-year limitation is not applied to this case.

Petitioner Kim

a. The judgment is not private individual's conduct of negligence and malpractice that RCW 4.16.080(2) implies, but state action. Targa managers' act of the violation of Zaran's lease agreement, for which six-year limitation should be applied, and removing order are not isolated conduct of negligence and malpractice, but involved with state action. Hence, the order applied the three-year limitation by RCW 4.16.080(2) is based on the mistakenly expressed words of negligence and malpractice. So, it must be treated as a mistake.

b. The personal property in RCW 4.16.080(2) implies small personal properties, such as a TV, computer, or radio, but does not imply the car that has a title, because "taking" of the car was involved with a judgment (state action), and thus, taking by a judgment (state action) constitutes deprivation of personal property without due process, which violates Fourteenth Amendment. All judges in every state must comply with Article VI, Section 2, and thus, applying state statutes must be in pursuance thereof.

c. A judgment is a judgment. The judgment must be interpreted equally. This case is not attacking the validity of the judgment, but claiming money

damages for the deprived personal properties the judgment authorized against City of Federal Way, but not against the judge. So, ten-year limitation is applied.

B. The answers for the questions presented

1. A judge's judgment is not the private conduct of negligence and malpractice but state action.

The municipal court judge's judgment as "an abandoned car" was a state action. In *M.L.B. v. S.L.J.*, U.S. Supreme Court held that the action of, and processes used by, state and federal courts constitute "state action" as follows:

> *In M.L.B. v. S.L.J.* (519 U.S. 102, 116 n. 8, 117 S.Ct. 555, 564 n. 8, 136 L.Ed.2d 473 (1996)), the Court found that a civil proceeding in a state court initiated by a husband to terminate the parental rights of his former spouse, as a prelude to an adoption petition by his new spouse, involved "state action."

RCW 4.16.080(2), *"An action for taking... or injuring personal property, including an action for any other injury to the person or rights of another..."* is clearly the statute for an action caused by and resulted from private conduct of negligence and malpractice, but it is not the statute for "state action." So, superior court judge's ruling that the municipal court judge's **judgment** was the private conduct of **negligence and malpractice** was a plain error, which applied wrong statute of RCW 4.16.080(2) to the state action.

State Appeals Court Commissioner, three judges

of Appeals Court, and five justices of State Supreme Court could not find the difference between private conduct and state action and contradicted the above precedent by U.S. Supreme Court.

2. Deprivation of personal properties by state action and violation of Art. VI [2] and Fourteenth Amendment

Constitutional law book (third edition) by Erwin Chemerinsky explains as, "there never has been doubt that the government must provide due process before it deprives a person of a real or personal property. Thus, five judges and five justices in Washington State should have noted a case of *Sniadach v. Family Finance Corp.* (395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969)). In *Sniadach v. Family Finance Corp.*, U.S. Supreme Court defines the act to deprive as:

> Whenever the government enforces private claims to property of one person against another, it has acted **to deprive** someone of his property. Thus the alleged debtor must be afforded some fair procedure to determine whether his property should be taken and transferred to the other party.

In *Pumpelly v. Green Bay & Mississippi Canal Co.* (80 U.S. (13 Wall.) 166, 179-80, 20 L.Ed. 557 (1871)), U.S. Supreme Court defines "taking" as:

> A "taking" may be found when government activity results in significant physical damage to the property that impairs its use.

Accordingly, the municipal court judge's judgment as an abandoned car clearly impaired the use of Kim's

personal properties forever and it made deprive Kim of personal properties without due process. The judge's impaired and deprived action was not private individual's conduct of negligence and malpractice, but state action. Thus, superior court judge's order simply granted the motion to dismiss pursuant to CR 12 (b)(6) on the basis of negligence and malpractice was a far-fetched plain error, which disregarded the violation of Fourteenth Amendment.

3. Superior court judge's additional errors

Additional error one

The lease agreement between Targa and Kim's mother and Kim started on November 3, 2000. The impounding occurred on October 28, 2000. Thus, Targa managers' impounding of a car of a tenant under the lease agreement with Zaran without a notice was wrongful act violating Zaran's lease agreement. Kim filed the complaint to match the statute of RCW 4.16.040(1) on November 2, 2006 (the judgment rendered as an abandoned car on November 16, 2000).

> RCW 4.16.040: Actions limited to six years: (1) An action **upon a contract** in writing, or liability express or implied arising out of a written agreement.

However, superior court judge disregarded this statute and applied three-year limitation by RCW 4.16.080(2) on the basis of mistakenly expressed words of negligence and malpractice, making Targa managers wrongful acts the conduct of negligence and malpractice. If the cause of action had been mistakenly expressed as the conduct of murder, the managers' acts would have become the single

conduct of murder. So, the granted motion to dismiss based on the mistakenly expressed words should have been treated as a mistake in the same way.

Additional error two

In RCW 4.16.080(2), *"An action for taking, detaining, or injuring personal property,"* the "personal property" implies the properties like a TV, computer, radio, and so on, but does not imply a car or eight-million-dollar yacht, because a car or yacht has a title, and Fourteenth Amendment protects such personal property.

"Taking...or injuring personal property" implies taking...or injuring by private individual's conduct, but does not imply by "state action." Superior court judge disregarded that Fourteenth Amendment protects Kim's properties with title and copyright and municipal court judge's violation of Fourteenth Amendment, *"nor shall any state deprive any person ...or property, without due process of law."* Thus, superior court judge's order applied wrong statute of RCW 4.16.080(2), abridged the privileges (right) to petition the Government for a redress of grievances, which is barred by Fourteenth Amendment, "No State shall make or enforce any law which shall abridge the privilege...of citizens of the United States."

However, state appeals court commissioner, three judges, and five justices including chief justice of State Supreme Court disregarded the superior court judge's the above all errors, and thus, all violated Article VI, Section 2 of the Constitution:

> **This Constitution**, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land;

and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

4. A judgment is a judgment.

RCW 4.16.020 read as:

> Actions to be commenced within ten years – Exception. The period prescribed for the commencement of actions shall be as follows: Within ten years.
> (2) For an action upon a **judgment** or decree of any court of the United States, or of any state or territory within the United States...

The appeals court commissioner misunderstood that this case was attacking the validity of municipal court judge's judgment, saying that Kim did not appeal the judgment as an abandoned car. To appeal against the judgment is a denying act of the judgment, but Kim accepted the judgment as it was. So, the judgment was final and conclusive. Thus, Kim, U.S. citizen since March 5, 1992 (No. 20243806), claims money damages for the deprivation of personal properties the judgment authorized against City of Federal Way, but not against the judge. If this case were claiming money damage against the judge, it could be attacking the validity of the judgment.

The commissioner affirmed, saying, "the ten-year limitation period of RCW 4.16.020(2) for an action upon a judgment or decree applies only to efforts to execute upon the judgment and not to efforts to attack the validity of a judgment," on the basis of the case of *Smith v. Whatcom County District Court* (147

Wn.2d 98, 52 P.3d 485 (2002)), which respondents cited. The case was construed from RCW 4.16.020(2), but RCW 4.16.020(2) was not construed from the case of *Smith v. Whatcom County District Court*. So, one authority cannot govern the statute of RCW 4.16.020(2). Several authorities can be construed from the RCW 4.16.020(2).

The judgment as abandoned car authorized the entire loss by state action; hence, this case is for the action to execute the judgment against City of Federal Way, but not against the judge.

However, the commissioner, by interpreting the word of "judgment" in the gerrymandering style, classified it as:

> The judgment only to efforts to execute upon the judgment and not to efforts to attack the validity of a judgment, and this statute does not allow a person ten years to bring an action to challenge the validity of a judgment or assert some wrongdoing in obtaining a judgment.

How far he departed from the core factors of this case and interpreted the statute of RCW 4.16.020(2) unequally?

A judgment is a judgment. There is no earmark or color on the judgment. Thus, the commissioner's affirmed ruling on the merits based on his own arbitrary classification of judgment, violates equal protection clause and Article VI, Section 2, abridges the right to petition the Government for a redress of grievances, justifies the deprivation of personal properties by state action, and limits the filing period the Fourteenth Amendment does not imply.

State appeals court three judges disregarded the errors in the commissioner's ruling, and State Supreme Court five justices unanimously denied the

petition for review without any explanation and violated Article VI [2], disregarding Targa managers' violation of RCW 4.16.040(1), State judges' the arbitrarily classified "judgment" in RCW 4.16.020(2), the violation of Fourteenth Amendment and Article VI [2], and the applied wrong statute of RCW 4.16.080(2), and then contradicted the above all precedents U.S. Supreme Court decided.

They have eyes to see the state statutes in the terribly distorted way, but they don't have eyes to see the violation of Article VI [2] and Fourteenth Amendment with knowledge.

Finally, State Supreme Court five justices denied the justiciability doctrine through the wrong concept of the two state statutes of RCW 4.16.080(2) and 4.16.020(2), by contradicting one more U.S. Supreme Court decision in *Windsor v. McVeigh*.

> In *Windsor v. McVeigh* (93 U.S. 274, 277, 280 (1876) 907-908) the Court spoke of the right to be heard as a principle which "lies at foundation of all well-ordered systems of jurisprudence" and is "founded in the first principles of natural justice."

V. CONCLUSION

Petitioner Kim prays this Court should grant the petition for a writ of certiorari.

Respectfully submitted on August 1, 2008.



Cyrus Y. Kim Pro Se

APPENDIX

THE SUPREME COURT OF WASHINGTON

CYRUS Y. KIM Petitioner, v. CITY OF FEDERAL WAY, TARGA REAL ESTATE SERVICE, INC., ABT TOWING OF FEDERAL WAY, INC. Respondents.	NO. 81080-0 ORDER C/A NO. 59497

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens, at its July 8, 2008 Motion Calendar, considered whether review should be granted pursuant RATP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied. The Petitioner's motion for sanction is also denied.

DATED at Olympia, Washington this 9th day of July, 2008. For the Court

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IN THE COURT OF APPEALS OF

THE STATE OF WASHINGTON
DIVISION ONE

CYRUS Y. KIM Appellant, v. CITY OF FEDERAL WAY, TARGA REAL ESTATE SERVICE, INC., ABT TOWING OF FEDERAL WAY, INC. Respondents.	NO. 59497-4-1 ORDER DENYING MOTION TO MODIFY

Appellant Cyrus Kim moves to modify the commissioner's September 4, 2007 ruling granting a motion on the merits and affirming the decision of the trial court. Respondents Targa Real Estate Service and the City of Federal Way have not filed responses. We have considered the motion under RAP 17.7 and have determined that it should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done the 30th day of November 2007.

Judge Stephen J. Dwyer, Anne Ellington, and May Kay Becker

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IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

CYRUS Y. KIM Appellant, v. CITY OF FEDERAL WAY, TARGA REAL ESTATE SERVICE, INC., ABT TOWING OF FEDERAL WAY, INC. Respondents.	NO. 59497-4-1 COMMISSIONER'S RULING GRANTING MOTION ON THE MERITS TO AFFIRM

The ten year limitation period of RCW 4.16.020(2) for an "action upon a judgment or decree" applies only to efforts to execute upon the judgment and not to efforts to attack the validity of a judgment. Any claims Kim alleged against the City of Federal Way and Targa Real Estate Service, Inc. arising out of the impound of his car in 2000 were known to him in 2000 and were barred by the statutes of limitations when he commenced his lawsuit in 2006.

The court's motion on the merits to affirm is granted and the decision of the superior court is affirmed.

Facts

Kim was a tenant of an apartment building managed by Targa. Kim's car was impounded in October 2000. Kim was present at a municipal court hearing in November 2000 when the trial judge ordered Kim to pay impound fees.

In November 2006, Kim sued Targa and the City of Federal Way. His complaint alleges "negligence,

malpractice, and intentional tort." The trial court granted the motion to dismiss Kim's claims.

Kim appeals.

CRITERIA FOR GRANTING A MOTION ON THE MERITS TO AFFIRM

RAP 18.14(e)(1) provides:

> A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the ...commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

Applying these criteria in light of State v. Rolax (104 Wn.2d 129m 702 P.2d 1185 (1985)), the commissioner determines that the issue presented is clearly without merit.

DECISION

The key question raised in this appeal is whether Kim's claims are barred by the statute of limitations. Targa and City of Federal Way argue that Kim knew all of the facts supporting any claims of negligence, malpractice or intentional tort when he was present at the November 16, 2000 impound hearing in the municipal court. They contend that the three year statute of limitations RCW 4.16.080(2) or two year statute of limitations RCW 4.16.100 bars any claims for negligence, malpractice, or intentional tort.

Kim offers several arguments including his reliance on the ten year limitation period of RCW 4.16.020(2):

> For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.
> (emphasis added)

But this statute does not allow a person 10 years to bring an action to challenge the validity of a judgment or to assert some wrongdoing in obtaining a judgment. This ten year limit is upon efforts to collect upon or enforce a judgment. See 28 MAJORIE DICK ROMBAUER, WASHINGTON PRACTICE: CEEDITORS' REMEDIES - DEBTORS' RELIEF ch. 7, at 89-92 (1998).

Kim argues that ownership of a car is determined by title to the car and a car should not be considered the same as other personal property. But Kim provides no authority that a person who wants to file a lawsuit alleging that they have the valid title to the car can wait almost six years after they participated in court proceedings ordering the impound of the car.

There is no argument that a discovery rule applies to extend the time for Kim to file his claims. Kim was aware in November of 2000 that his car had been impounded and the municipal court had ruled against him. He did not appeal that trial court

ruling. The ten year statute of limitations does not apply and Kim's claims were all barred when he commenced his lawsuit in 2006.
The criteria for a motion on the merits to affirm have been satisfied.

Now, therefore, it is hereby

ORDERED that the motion on the merits is granted and the decision of the trial court is affirmed.
Done this 4th day of September 2007.

Commissioner James Verellen

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE KING COUNTY

CYRUS Y. KIM Plaintiff, v. CITY OF FEDERAL WAY, TARGA REAL ESTATE SERVICE, INC., ABT TOWING OF FEDERAL WAY, INC. Defendants.	NO. 06-2-35221-1 KNT ORDER GRANTING MOTION TO DISMISS

Negligence and malpractice have three-year limitation. It is further ORDERED that, the plaintiff's complaint against Targa Real Estate Services be and the same hereby is DISMISSED with prejudice.

DONE IN OPEN COURT this 23rd day of February 2007. Judge Michael Heavey

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE KING COUNTY

CYRUS Y. KIM Plaintiff, v. CITY OF FEDERAL WAY, TARGA REAL ESTATE SERVICE, INC., ABT TOWING OF FEDERAL WAY, INC. Defendants.	NO. 06-2-35221-1 KNT ORDER GRANTING MOTION TO DISMISS

It appears that he did not file a suit for injuries within three years of the date of injury, so, therefore, I find the City of Federal Way's motion for summary judgment is well taken, and I grant that.
So ORDERED this 19th day of January 2007.
Judge Michael Heavey

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FEDERAL WAY MUNICIPAL COURT
34004 9th Ave S, Building A
PO Box 9717
Federal Way, WA 98003

NOTICE OF JUDGMENT AFTER INPOUND HEARING
Cause # V100-0027

In Re the impound Hearing of
Cyrus Y. Kim
Petitioner

TO: Cyrus Y. Kim
YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in this court at the location listed above in the sum of $570, in the above styled matter. As of 11-16-00 – storage fees increase $30 each additional day.
YOU ARE FURTHER NOTIFIED that attorney fees and costs will be awarded against you under RCW 46.55.120 if the judgment is not paid within fifteen (15) days of this notice.

DATED 11-16-00

Judge David Tracy

02

(1)

No. 08-143

Supreme Court, U.S.
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In The

Supreme Court of the United States

CYRUS KIM,

Petitioner,

vs.

CITY OF FEDERAL WAY,
TARGA REAL ESTATE SERVICE, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Washington, Division 1

RESPONDENT CITY OF FEDERAL WAY'S BRIEF IN OPPOSITION

BRIAN A. CHRISTENSEN
JERRY J. MOBERG & ASSOCIATES
451 Diamond Drive
Ephrata, WA 98823
(509) 754-2356
Attorney for Respondent, City of Federal Way

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Petitioner raises seven (7) questions for review, none of which have been raised or argued prior and none of which make any sense. The issue in this case involves *whether the trial court correctly applied the statute of limitations.*

STATEMENT OF THE CASE

In November of 2006, Petitioner filed suit against the City of Federal Way, Washington, and Targa Real Estate Service. The basis of his suit arises from the impound of his car in October, 2000, and a subsequent municipal court ruling against him, wherein he was ordered to pay impound fees. Plaintiff's lawsuit alleged negligence, malpractice and "intentional tort." The City of Federal Way moved to dismiss on the basis of the statute of limitations and the motion was granted on January 19th, 2007. (Pet. App. A-7)

Petitioner appealed the dismissal of his suit and a Court of Appeals Commissioner found that the appeal was "clearly without merit." The court brought on its own, and granted, a motion on the merits upholding the dismissal on September 4th, 2007. (Pet. App. A-3 – A-6) Petitioner then brought a motion to modify the commissioners ruling, and the Court of Appeals denied the motion on November 30th, 2007. (Pet. App. A-2) Petitioner then appealed to the Washington Supreme Court, which declined to review the matter by order dated July 9th, 2008. (Pet. App. A-1)

REASONS FOR DENYING THE WRIT

1. ***This matter does not involve any type of federal question, jurisdictional controversy or any other compelling reason sufficient to warrant review.*** *See* **Supreme Court Rule 10.** Petitioner tries to raise issues of constitutional magnitude at this point in the litigation, but none of his newly constructed arguments help his cause.

On Page six (6) of the Petition, petitioner admits that his lawsuit was for negligence, malpractice and intentional tort, however, he "meant" to claim a constitutional violation because of "state action," a theory he found out about after the fact. Unfortunately for Petitioner, a civil rights claim is not an "action on a judgment" and the ten (10) year statute of limitations petitioner argues for, would not be applicable and the matter would still have to be dismissed as violative of the statute of limitations. Under Washington law, the statute of limitations applicable to ***§ 1983*** claims is three years. **RCW 4.16.080**; ***RK Ventures, Inc. v. City of Seattle*****, 307 F.3d 1045 C.A. 9 (2002).**

2. ***The trial court and the Washington Court of Appeals decided the matter correctly.*** Kim's first stated claim is for negligence. The statute of limitations for negligence is three years. **RCW 4.16.080(2).** Kim's Complaint is clear that the negligence he complains of is the action of the judge at the hearing in November of 2000.

Kim's second claim, legal malpractice, also has a three year statute of limitations. **RCW 4.16.080; *Huff v. Roach*, 125 Wn.App. 724, 729, 106 P.3d 268 (2005).** This claim is also based upon the court's ruling in the year 2000, and, therefore, is three years late.

There is another issue with legal malpractice, however – notice. The statute of limitations in a malpractice case does not begin until the claimant is aware of the events that would constitute negligence. **Once the facts are known, the statute begins to run.** *See,* ***Richardson v. Denend*, 59 Wn.App. 92, 795 P.2d 1192 (1990); *Peters v. Simmons*, 87 Wn.2d 400, 552 P.2d 1053 (1976); *Reichelt v. Johns-Manville Corp.*, 107 Wn.2d 761, 733 P.2d 530 (1987).** In this case, the facts were known to Kim in November of 2000 – he was at the hearing where he claims malpractice was committed. In fact, the case law states that entry of an adverse judgment places a plaintiff on notice that malpractice may have been committed. ***Richardson*, 59 Wn.App. at 98** (argument "that the statute of limitations is tolled until such time as a dissatisfied client obtains other legal counsel or engages in independent legal research to determine the propriety of the actions of his or her former counsel is not the law of Washington").

Kim's final claim was for "intentional tort." It is unclear exactly what he means, however, it is clear that he is complaining about the judge's actions in November of 2000. **RCW 4.16.080(2)** applies to actions for "*taking, detaining, or injuring personal*

property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated." Kim's "intentional tort" allegation is clearly an action for injuring person or property, hence, the statute of limitations is three years.

Kim did not offer the trial court judge any alternative causes of action in his objection to Federal Way's motion, although he argued that the Defendants misunderstood his claims.

Petitioner argues that a ten (10) year statute of limitations, pursuant to **RCW 4.16.020(2)**, should have applied in this matter. This statute applies

> **For an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or of any territory or possession of the United States outside the boundaries thereof, or of any extraterritorial court of the United States, unless the period is extended under *RCW 6.17.020* or a similar provision in another jurisdiction.**

The matter at bar is *not* an action upon a judgment. Kim misunderstands the statute. **RCW 4.16.020(2)** contains a limitation for the enforcement of an action. ***Smith v. Whatcom County District Court*, 147 Wn.2d 98, 52 P.3d 485 (2002).** Petitioner's suit did not seek to enforce a judgement.

CONCLUSION

Petitioner's Petition for Writ of Certiorari is meritless and should be denied.

Dated September 2008

Respectfully submitted,

BRIAN A. CHRISTENSEN,
WSBA #24682
Attorney for Respondent,
City of Federal Way